RECEIVED FEDERAL ELECTION COMMISSION

MUR#_7016

FFB 24 AM II: 18

Diane Y. Smoyer

Arlington, VA 22207

OFFICE OF GENERAL

By US Mail

Office of General Counsel Federal Election Commission 999 E Street, NW Washington, DC 20463

Re: Personal Use of Campaign Funds by VA-8 House

Candidate Bruce Bowen Shuttleworth (2014)

Dear Madam or Sir:

My name is Diane Yvonne Smoyer. I am also known as Divonne Smoyer.

I am a resident of Virginia, and I am over the age of 18. My address is Arlington, VA 22207.

I write to lodge this complaint in connection with the Shuttleworth for Congress Campaign, and the candidate, Bruce Bowen Shuttleworth.

Mr. Shuttleworth was a candidate for the House of Representatives for the 8th District of Virginia in 2014.

Mr. Shuttleworth is my husband. We are in the process of divorcing.

On or about March 27, 2014, I contributed \$2,600 to his campaign.

According to the FEC's database, Shuttleworth for Congress has \$213,499 in cash on hand.

On information and belief, no one (other than myself, my mother and my brother) has sought a refund of campaign contributions to Shuttleworth for Congress.

I have repeatedly sought a refund of my \$2,600 contribution.

Mr. Shuttleworth has refused my refund request. Instead, he (and his divorce counsel) have asserted that my refund request will be considered in the context of an overall financial settlement in our divorce.

As such, Mr. Shuttleworth asserts either that (1) to the extent he owes me money in a divorce settlement, he will consider a refund of these funds as part of that payment; or (2) to the extent I owe him money as part of a divorce settlement, he will keep my campaign contributions and use them as a "credit" toward my payment. In any event, Mr. Shuttleworth is not honoring my refund request as a campaign contributor, and instead, is "reserving judgment [on my refund request] based on [divorce] settlement discussions." (see email dated December 30, 2015, 12:25 p.m.).

Withholding refund of my campaign contributions in this manner constitutes an impermissible use of campaign funds.

To support the statements above, please see the attachments hereto, which include (1) a series of emails and (2) letters between Mr. Shuttleworth and me and (3) a December 9, 2015 settlement proposal to resolve financial issues from Mr. Shuttleworth's counsel (Cole) to my counsel (Schuler) which incorporates repayment of my campaign contribution as part of a financial settlement in our divorce.

From this correspondence, it is clear that Mr. Shuttleworth is using his campaign funds (including my contribution) to leverage a favorable financial outcome for himself in a divorce proceeding.

I bring this matter to the FEC's attention for appropriate investigation and disposition.

I would be happy to supply further evidence as may be necessary and appropriate.

Very truly yours,

District of Columbia (SS)

Subscribed and vom to contra me, in my presence,

this total in the bruth of the

My commission expires Tune 14, 2013



Divonne Smoyer

Arlington, VA 22207

Bruce Shuttleworth Shuttleworth for Congress 5014 Little Falls Road Arlington, Virginia 22207

January 19, 2016

Dear Bruce,

I write to follow up on my prior email this past December and my letter earlier this month regarding your return from your Congressional campaign account my contribution in 2014 in the amount of \$2600.

I have not yet received the return of my contribution. I ask that I receive the returned contribution not later than January 31, 1016.

Very truly yours,

Divonne Smayer

Diane Y. Smoyer

Arlington, VA 22207 January 4, 2016

Mr. Bruce Shuttleworth
On behalf of Shuttleworth for Congress
5014 Little Falls Road
Arlington, VA 22207

Dear Mr. Shuttleworth:

3.4

I write to follow up on my email requests beginning on December 24, 2015 for a return of my \$2600 contribution to your 2014 US Congressional campaign.

I understand that your campaign has a sizeable surplus that has been sitting in an account for at least 18 months.

I am in need of my funds and request that they be returned promptly to me at the above address. Attached, for your convenience, is relevant FEC guidance regarding refunds of contributions as well as guidance as to what constitutes prohibited personal use of campaign funds. I confirmed with a representative of the FEC this afternoon that the attached guidance is still applicable to return of contributions and personal use of contributions by the candidate.

Very truly yours,

Diane // Smoyer

See Chapter 13, Section 23, for information on reporting transfers.

Refunds of Contributions

Campaigns may refund any contribution, but must refund (or otherwise disgorge) a contribution that is from a prohibited source or in excess of the contribution limits. See Chapter 5, Section 2, "Questionable Contributions," for more information. For information on reporting refunds, see Chapter 13, Section 22, "Reporting Refunds, Returns, Bounced or Unchashed Checks and Disgorged Contributions."

In-Kind Contributions

Any in-kind contribution received by a committee must be reported as an operating expenditure (even though money has not been expended by the committee) in addition to being reported as a contribution received. 104.13(a). This reporting adjustment allows the committee to balance its cash on hand. For more information and an example of reporting in-kind contributions, see Chapter 13, "Completing FEC Reports."

Written Agreements to Make Expenditures
A written agreement to make an expenditure, such
as a media contract, constitutes an expenditure.
100.112. For information on reporting expenditures
and debts incurred, see Chapter 13, "Completing
FEC Reports."

Ballot Initiative Communications and Donations

Payments for ads in which a candidate endorses a ballot initiative on an issue with which he or she is closely associated are expenditures in connection with the campaign. AOs 2006-04 and 2004-29.

A campaign may also support or oppose ballot initiatives and make donations to committees established to do so under state election laws. Such donations are considered expenditures under the Act. See AO 2004-29.

Special rules apply to a federal candidate or officeholder's fundralsing for such organizations, see Appendix E, Section 1.

Non-Campaign Related Expenses

Additionally, campaign funds may be used for the following purposes that are not related to the candidate's campaign for federal office:

- To defray the ordinary and necessary expenses incurred in connection with an individual's duties as of a federal officeholder (House and Senate rules may apply; see Appendix G), such as:
 - Travel expenses for a federal officeholder and his or her accompanying spouse and children, provided that the travel is undertaken to participate in a function that is directly connected to the officeholder's bona fide official responsibilities. 113.2(a) (1). See, for example, AOs 2005-09 and 1997-02; and
 - Winding down costs of a federal office-holder's office for a period of six months after leaving office. I 13.2(a)(2). See, for example, AOs 1996-44 and 1996-14 (House and Senate rules may apply; see AOs 2000-37 and 1996-45; and see Appendix G).
- Donations to charities (organizations defined in 26 U.S.C. §170(c) of the Internal Revenue Code).² 113.2(b). See, for example, AO 2005-06;
- Unlimited transfers to any national, state or local party committee. I 13.2(c). See, for example, AO 2004-22;
- Donations to state and local candidates, subject to the provisions of state law. 113.2(d).
 See 52 U.S.C. §30114(a)(5); and
- Any other lawful purpose, unless expressly prohibited by the Act. 113.2(e). See 52 U.S.C. §30114(a)(6). (Prohibited purposes are summarized below.)

Contributions to Other Federal Candidates and Nonfederal Candidates

A federal candidate committee may contribute up to \$2,000 per election to the committee of another federal candidate. 102.12(c)(2) and 102.13(c)(2). Contributions from federal candidate committees to state or local candidate committees are subject to state law. 300.62. For more information on reporting donations to other candidates, see Chapter 13, Section 17.

² Campaign funds may not be converted to personal use. Commission regulations state that donations of campaign funds to a charitable organization do not constitute the personal use of campaign funds unless the candidate (former or current) receives compensation from the donee organization before the organization has expended, for purposes unrelated to the candidate's personal benefit, the entire amount donated by the campaign. 113.1(g)(2).

2. PROHIBITED USES OF CAMPAIGN FUNDS

Certain Air Travel

Title VI, Section 601 of the Honest Leadership and Open Government Act of 2007 (HLOGA) (Pub. L. No. 81, 121 Stati735), signed into law on September 14, 2007, significantly restricts the use of campaign funds for ain travel by federal candidates and officeholders. In general, expenditures from campaign funds for non-commercial air travel are prohibited unless they are in accordance with 100.93. 113.5. See Chapter 10, Section 4, "Campaign Travel" for further information.

Personal Use of Campaign Funds

Using campaign funds for personal use is prohibited. 52 U.S.C. §30114(b)(1) and 113.1(g). Commission regulations provide a test, called the "irrespective test," to differentiate legitimate campaign and officeholder expenses from personal expenses. Under the "irrespective test," personal use is any use of funds in a campaign account of a candidate (or former candidate) to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or responsibilities as a federal officeholder. 113.1(g). More simply, if the expense would exist even in the absence of the candidacy or even if the officeholder were not in office, then the personal use ban applies.

Conversely, any expense that results from campaign or officeholder activity falls outside the personal use ban.

EXAMPLE

A candidate may not make tuition payments with campaign funds, unless the costs are associated with training campaign staff. See 113.1(g) (1)(i)(D).

What is Not Personal Use

In addition to the "irrespective test," Commission regulations include other uses of funds that do not constitute personal use and thus are permissible uses of campaign funds. 113.1(g) and 113.2.

Charitable Donations

Gifts to charity are not considered personal use expenses as long as the candidate does not receive compensation from the charitable organization before it has expended the entire amount donated. Note that the amount donated must have been used for purposes that do not personally benefit the candidate. 113.1(g)(2). See also AOs 2005-06, 1997-01, 1996-40 and 1994-20.

Transfer of Campaign Assets

The sale or transfer of a campaign asset (see Chapter 14, "Winding Down the Campaign") to either the candidate or a third party does not constitute personal use as long as the transaction is made at the fair market value. 113.1(g)(3).

Gifts

On special occasions, campaign funds may be used to purchase gifts or make donations of nominal value to persons other than the members of the candidate's family. 113.1(g)(4).

Candidate Salary

The candidate may receive a salary from his or her campaign committee only under the following conditions:

- The salary must be paid by the principal campaign committee;
- The salary must not exceed the lesser of the minimum annual salary for the federal office sought or what the candidate received as earned income in the previous year;
- Individuals who elect to receive a salary from their campaign committees must provide income tax records and additional proof of earnings from relevant years upon request from the Commission;
- Payments of salary from the committee must be made on a pro-rata basis (i.e., a candidate may not receive a whole year's salary if he or she is not a candidate for an entire twelvemonth period);
- Incumbent federal officeholders may not receive a salary payment from campaign funds; and

³ The provisions of HLOGA also apply to nonconnected committees (known as "leadership PACs") sponsored by candidates for the House of Representatives.

Smoyer, Divonne	
From: Sent: To: Subject:	Divonne Smoyer Thursday, February 04, 2016 1:15 PM Smoyer, Divonne Fw: Re:
; 	
From: Divonne Smoyer Sent: Wednesday, Dece To: Bruce Shuttleworth Subject: RE: Re:	ember 30, 2015 1:23 PM
Not badgering. Take it	up with the fec
From: Bruce Shuttlewo Sent: Wednesday, Dece To: Divonne Smoyer Subject: Re: Re:	 rth ember 30, 2015 1:19 PM
It will be a partial repartion of the state	yment of my documented loans to Shuttleworth for Congress. Whether marital or pre-marital op badgering me.
On Wed, Dec 30, 2015	at 1:10 PM, Divonne Smoyer
confirm	wrote: use in connection with divorce negotiations. It is not badgering, it isthe law. Call the Fec to
To: Divonne Smoyer	orth ember 30, 2015 1:09 PM
Subject: Re: Re: Please stop so wrongfo	ully badgering me. There is no personal use. There is repayment of loans.
	at 12:36 PM, Divonne Smoyer
than I. I suggest you ta	>>> wrote: lance. You can't use contributions like you are doing for personal use. You know the FEC better like this seriously. In the meantime, the mediation date will slip and I have no confidence you are . We need a judge. Even your sworn affidavit was in bad faith. Missing a ton of obvious stuff.
If nothing to hide, why	did I have to identify off the top of my head many gaps.
Bruce, this is the real whappen when you do the From: Bruce Shuttlewo	vorld. You took an oath that you disclosed all. And you did not. What do you think is going to this

Smoyer, Divonne

From:

Divonne Smoyer

Sent:

Thursday, February 04, 2016 1:09 PM

To:

Smoyer, Divonne

Subject:

Fw: Refunds to my family for campaign contributions in 2012 and 2014

From: Divonne Smoyer

Sent: Saturday, December 26, 2015 8:22 AM

To: Bruce Shuttleworth

Subject: RE: Refunds to my family for campaign contributions in 2012 and 2014

And, from my research this far, Carl Grooms contributions on behalf of his kids are sham contributions and are illegal as such. I believe they also need to be returned.

Fram: Divonne Smoyer

Sent: Saturday, December 26, 2015 8:14 AM

To: Bruce Shuttleworth

Subject: RE: Refunds to my family for campaign contributions in 2012 and 2014

Campaign funds are indeed subject to refunds and they are routinely given if requested. If you have legal authority that shows otherwise, please supply it.

From: Bruce CShuttleworth

Sent: Friday, December 25, 2015 11:19 PM To: Smoyer, Divonne; Divonne Smoyer

Subject: Re: Refunds to my family for campaign contributions in 2012 and 2014

Message received. Remaining money in congress account will partially pay off loans (whether pre-marital or post-marital TBD) given to account. Campaign contributions aren't subject to refunds. I very much appreciated the family support and will keep this generosity in mind during our settlement negotiation.

On Thu, Dec 24, 2015 at 6:14 PM, Smoyer, Divonne

wrote: Dear Bruce,

My family and I have noticed you have hundreds of thousands of surplus dollars on hand in your Shuttleworth for Congress Campaign. Please be advised that I would like my 2600 returned in full. My mother also would like her 900 refunded in full. My brother also would like to have his 5000 refunded in full. We request that these funds be refunded immediately. Thank you. You can send all 3 return checks to me at

Arlington, VA 22207 and I will distribute them accordingly.

Smoyer, Divonne

Subject:

FW: Shuttleworth Smoyer Settlement Proposal

From: Teresa Cole

Sent: Wednesday, December 09, 2015 6:12 PM

To: Sara Leiner Schuler

Subject: Shuttleworth Smoyer Settlement Proposal

This is an Offer of Settlement and neither it nor any Facts herein are admissible for any other purpose, except on the issue of Legal Fees

Dear Sara,

Per your letter, we are submitting this in a fairly simple outline form for right now. I think you will agree that it will be important to see if we can come to a general agreement on the broad strokes and then we can hone in on the specific additional documents needed to finalize the numbers. Rest assured, any concerns/discrepancies/misunderstandings can be fully discussed/vetted/certified as we progress.

Other Financial Marital Property Settlement offer:

At Divonne's discretion. Bruce will reduce settlement by the amount of her campaign contributions. He does thank Divonne for her nelp with these two runs and hopes that their children are better for the exposure to the depth and breadth of society. He also hopes that it will broaden their horizons, lessen any intimidation and, perhaps, help them go into college.

Thanks,

Teresa S. Cole, Esq.
www.colemillerlaw.comhttp://www.colemillerlaw.com
Cole Miller PLLC
1945 Old Gallows Road, Ste. 205
Vienna, VA 22182
703-883-3707 phone
703-636-5767 fax
tcole@colemillerlaw.com<mailto:tcole@colemillerlaw.com>

[Cole Miller Pllc logo email blurb.jpg]

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